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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,689	06/13/2001	Robert D. Fields	10276 (3080-0060	4306

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EASTMAN KODAK COMPANY
343 STATE STREET
ROCHESTER, NY 14650-2201

EXAMINER

NOTE, JANIS L

ART UNIT	PAPER NUMBER
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1756

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/880,689

Applicant(s)

FIELDS ET AL.

Examiner

Janis L. Dote

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4-7,9-11,13-20,22-30,32,33,35,36,38-41,45 and 46 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 2,4-7,9-11,13-20,22-24,30,32,33,35,36,38-41,45 and 46 is/are rejected.
7) ☒ Claim(s) 25-29 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 13 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on Jun. 27, 2005, has been entered.

2. The examiner acknowledges the cancellation of claims 31, 37, and 44, and the amendments to claims 2, 5-7, 9-11, 14, 27, 30, 32, 36, 40, 45, and 46, set forth in the amendment filed on Jun. 27, 2005. Claims 2, 4-7, 9-11, 13-20, 22-30, 32, 33, 35, 36, 38-41, 45, and 46 are pending.

3. The rejection of claims 4, 17, 30, 35, and 44 under 35 U.S.C. 112, first paragraph, set forth in the office action mailed on Feb. 23, 2005, paragraph 6, has been withdrawn in response to the amendment to claim 30 and the cancellation of claim 44 set forth in the amendment filed on Jun. 27, 2005.

The 35 U.S.C. 103(a) part of the rejections of claims 4, 13, 17, 22, 30, 33, 35, 38, 40, and 41 under 35 U.S.C. 102(e)/103(a) over US 6,692,880 B2 (Fields'880) and of the

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rejections of claims 25-29 under 35 U.S.C. 103(a) over Fields'880 combined with the other cited prior art, set forth in the office action mailed on Feb. 23, 2005, paragraphs 9-13, respectively, have been withdrawn because Fields'880 is not available as prior art under 35 U.S.C. 103(c). Fields was published after the filing date of the instant application, but was filed before the instant application. Applicants' representative has shown that Fields'880 and the instant application were commonly owned by the same entity at the time the invention in the instant application was made. See applicants' response filed on Jun. 27, 2005, page 11, lines 18-33.

The rejections of claims 2, 5, 6, 9, 10, 14, 16, 18, 19, 23, 31-33, 36-41, 45, and 46 under 35 U.S.C. 102(e)/103(a) or under 35 U.S.C. 102(a)/103(a) over US 6,197,466 B1 (Fields'446), as evidenced by the ACS File registry number 60806-47-5, and the rejections of claims 7, 11, 13, 15, 20, 22, and 24-29 under 35 U.S.C. 103(a) over Fields'446 combined with the cited references, set forth in the office action mailed on Feb. 23, 2005, paragraphs 18-22, respectively, have been withdrawn in response to the cancellation of claim 31 and the amendments to claims 40 and 46, wherein the 2 minute charging level is from "-20 to about -30 $\mu\text{C/g.}$ " Fields'466 does not exemplify toner

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particles that exhibit such a 2 minute charging level as recited in instant claims. Thus, there is not enough information for a person having ordinary skill in the art to reasonable presume that the Fields' 446 toner particles comprise silica or colloidal silica as recited in instant claims 40 and 46, respectively.

4. The term "2'/10' MECCA charge ratio" is defined as the ratio of the level of charge obtained after 2 minutes of charging the toner to the level of charge obtained after 10 minutes of charging, where the charge is determined in a MECCA device. See the instant specification, page 19, lines 15-21, and page 22, lines 1-15.

5. The reference US 6,692,880 B2 (Fields' 880) has an effective filing date of May 14, 2001, which is before the filing date of Jun. 13, 2001, of the instant application. The disclosure cited in Fields' 880 has antecedent basis in the US provisional application No. 60/290,707 in the paragraph bridging pages 11 and 12, and at pages 21-23.

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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7. Claims 4, 17, 30 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,692,880 B2 (Fields'880), as evidenced by the US provisional application 60/290,707 (Application'707).

Fields'880 exemplifies a developer comprising a magnetic carrier and toner particles. The toner particles comprise 88.9 wt% of a crosslinked styrene-butylacrylate copolymer associated with the tradename SB77X1, produced by Eastman Kodak, 6.2 wt% of carbon black, 1.5 wt% of an organo iron complex charge control agent associated with the tradename T77, and 2.0 wt% of a polyethylene wax. The toner particles are surface treated with 0.10 wt% of hydrophobic silica associated with the tradename R972 silica, obtained from Nippon Aerosil. See Fields'880, col. 12, lines 10-20 and 45-51, and Table 3 at col. 13, example 8; and Application'707, page 21, lines 10-13, page 22, lines 13-16, and Table 3 at page 23, example 8. After mixing the toner particles with the magnetic carrier for 2 minutes, the toner particles had a MECCA charge to mass ratio (Q/m) of $-27.0 \mu\text{C/g}$, which is within the range of -20 to about $-30 \mu\text{C/g}$ recited in instant claim 30. After mixing the toner particles with the magnetic carrier for 10 minutes, the toner particles had a MECCA Q/m of $-37.0 \mu\text{C/g}$. The charge ratio of the Q/m at 2 minutes to the Q/m at 10 minutes is 0.73.

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Fields'880, col. 12, lines 57-63, and Table 3, example 8.

Application'707, paragraph bridging pages 22 and 23, and Table 3, example 8.

The Fields'880 charge ratio of the Q/m at 2 minutes to the Q/m at 10 minutes of 0.73 meets the lower limit, "about 0.9," in the range "about 0.9 to about 1.1" recited in instant claim 30. The term "about" admits variation. There is no evidence on the present record showing that the charge ratio "about 0.9" is patentably distinct from the Fields'880 charge ratio of 0.73.

8. Claims 2, 5-7, 14, 16, 23, 32, 33, 36, 38-41, 45, and 46 are rejected under 35 U.S.C. 102(e) as anticipated by Fields'880, as evidenced by Application'707.

Fields'880, as evidenced by Application'707, teaches a developer as described in paragraph 7 above, which is incorporated herein by reference.

The toner particles in example 8 of Fields'880 meet the compositional limitations recited in the instant claims but for the presence of silica or colloidal silica in the toner binder resin recited in instant claim 40 and claims 32 and 46, respectively. The Fields'880 amount of 88.9 wt% of the crosslinked styrene-acrylate copolymer associated with the tradename SB77XL is within the range of "about 80 wt% to about

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95 wt%" recited in instant claim 33. The amount of 88.9 wt% meets the amount of "about 90 wt%" recited in instant claim 14. The term "about" admits variation. There is no evidence on the present record showing that the amount of "about 90 wt%" recited in instant claim 14 is patentably distinct from the Fields'880 amount of 88.9 wt%. The Fields'880 amount of 1.5 wt% of the organo iron complex charge control agent associated with the tradename T77 is within the range of "about 1 wt% to about 2.5 wt%" recited in instant claim 33. The amount of 1.5 wt% of the organo iron complex charge control agent meets the amount of "about 1.8 wt%" recited in instant claim 14. There is no evidence on the present record showing that the amount of "about 1.8 wt%" is patentably distinct from the Fields'880 amount of 1.5 wt%. The Fields'880 amount of 0.10 wt% of the hydrophobic silica is within the ranges of "about 0.05 wt% to about 5.0 wt%" recited in instant claim 33. The amount of 0.10 wt% meets the amount of "about 0.2 wt%" recited in instant claim 14. There is no evidence on the present record showing that the amount of "about 0.2 wt%" is patentably distinct from the Fields'880 amount of 0.10 wt%. See Fields'880, col. 12, lines 10-20, and Table 3 at col. 13, example 8; and Application'707, page 21, lines 10-13, and Table 3 at page 23, example 8.

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As discussed above, Fields'880 does not expressly disclose that its toner particles comprise silica or colloidal silica as recited in the instant claims. However, as discussed above, the Fields'880 toner particles meet the compositional limitations recited in the instant claims but for the presence of silica or colloidal silica. The toner particles also exhibit a 2 minute MECCA charge of $-27 \mu\text{C/g}$, which is within the range of "-20 to about $-30 \mu\text{C/g}$ " recited in instant claims 40 and 46. As discussed in paragraph 7 above, the Fields'880 2'/10' MECCA charge ratio of 0.73 meets the lower limit, "about 0.9," in the range "about 0.9 to about 1.1" recited in instant claims 40 and 46. The term "about" admits variation. There is no evidence on the present record showing that the 2'/10' MECCA charge ratio of "about 0.9" is patentably distinct from the Fields'880 charge ratio of 0.73. Thus, based on the above facts, it is reasonable to presume that the toner particles in example 8 of Fields'880 comprise the silica as recited in instant claims. The burden is on applicants to prove otherwise. In re Fitzgerald, 205 USPQ 594 (CCPA 1980).

9. Claims 9-11, 13, 15, 18-20, 22, and 24 are rejected under 35 U.S.C. 102(e) as anticipated by Fields'880, as evidenced by Application'707.

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Fields'880, as evidenced by Application'707, discloses a developer as described in paragraph 8 above, which is incorporated herein by reference.

The toner particles in example 8 of Fields'880 meet the compositional limitations recited in the instant claims but for the presence of the silica or colloidal silica in the toner resin. The Fields'880 amount 2.0 wt% of the polyethylene wax is within the range of "about 0.1 wt% to about 10 wt%" based on the weight of the toner particles recited in instant claims 13 and 22. The amount of 2.0 wt% meets the amount of "about 1.8 wt%" recited in instant claims 15 and 24. There is no evidence on the present record showing that the amount of "about 1.8 wt%" is patentably distinct from the Fields'880 amount of 2.0 wt%.

For the reasons discussed in paragraph 8, supra, it is reasonable to presume that the toner particles in example 8 of Fields'880 comprise the silica as recited in instant claims. The burden is on applicants to prove otherwise. Fitzgerald, supra.

Claims 9-11, 13, 15, 18-20, 22, and 24 are written in product-by-process format. Fields'880 does not disclose that the cross-linked styrene-acrylate copolymer is made by a "limited coalescence" process as recited in the instant claims.

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However, as discussed above, the Fields'880 copolymer meets the compositional limitations recited in instant claim 33 and 40. Accordingly, the Fields'880 copolymer appears to be the same or substantially the same as the toner resin made by the "limited coalescence" process recited in the instant claims. The burden is on applicants to prove otherwise. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983); In re Thorpe, 227 USPQ 964 (Fed. Cir. 1985); MPEP 2113.

10. Applicants' arguments filed on Jun. 27, 2005, with respect to the rejections set forth in paragraphs 7-9 above have been fully considered but they are not persuasive.

Applicants assert that Fields'880 does not disclose any toner particles having a 2'/10' MECCA charge ratio of about 0.9 to about 1.1 and a 2 minute charge level of from -20 to about -30 $\mu\text{C/g}$ as recited in instant claims 30 and 40.

However, as discussed in the rejections in paragraphs 7 and 8 above, the Fields'880 toner in example 8 has a 2 minute charge level of -27 $\mu\text{C/g}$, which is within the range of -20 to about -30 $\mu\text{C/g}$ as recited in instant claims 30 and 40. For the reasons discussed in paragraphs 7 and 8, the Fields' charge ratio of 0.73 meets the lower limit, "about 0.9," in the range of "about 0.9 to about 1.1." The term "about" admits variation.

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There is no objective evidence on the present record showing that a charge ratio of "about 0.9" is patentably distinct from the Fields'880 ratio of 0.73. Accordingly, the rejections in paragraphs 7-9 stand.

With respect to the rejections in paragraphs 8 and 9 above, applicants further assert that Fields does not disclose or suggest the presence of silica in the toner particles.

However, for the reasons discussed in paragraphs 8 and 9 above, it is reasonable to presume that the toner particles in example 8 of Fields'880 comprise silica or colloidal silica as recited in instant claims 40 and 32, respectively. The USPTO is not in a position to conduct tests of prior art disclosures. When the prior art composition is disclosed to have all of the properties required by a claimed composition, and particularly when, as here, the instant application teaches that certain of the properties are due to the presence of a particular material, i.e., colloidal silica or silica particles lead to toner "stable triboelectric charge levels independent of relative humidity and which are consistent over time" (page 3, lines 13-15, and page 3, line 21, to page 4, line 8, of the instant specification), the question arises whether the disclosed composition of the prior art is in fact an embodiment of the claimed composition. As discussed in paragraphs 8 and 9, supra,

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Fields'880 teaches toner particles that meet the charge properties recited in the instant claims. The reference does not explicitly disclose that the toner particles comprise the silica particles recited in the instant claims. However, neither does the instant specification explicitly identify the source of the colloidal silica or silica in the toner particles exemplified in the inventive examples of the instant specification. See the instant specification, Table 1 at page 22. The toner binder resin used in the toner particles of Fields'880 is a cross-linked styrene-acrylate resin obtained from Eastman Kodak. Furthermore, the Fields'880 toner binder resin is associated with product SB77XL, which is also used as the toner binder resin in the examples of the instant specification. When, as here, the inventive examples in the instant specification, which are said to have all of the properties required of the claimed composition, are silent as to the origin of the particular colloidal silica or silica, but share a common component with at least one of the references, i.e., SB77XL, an Eastman Kodak resin, the presumption becomes strong that the toner binder resin is the source of the "missing component," i.e., the colloidal silica or silica. Surely, the burden on applicants to identify the source of the colloidal silica or silica in their inventive examples is trivial.

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Moreover, because the toner binder resin in the reference is an Eastman Kodak material and because the reference also shares common inventors with the instant application, the burden on applicants to verify the presence (or absence) of colloidal silica or silica in the toner binder resin of the reference is equally trivial. Of course even, if the toner binder resin was not obtained from the same source, it would be appropriate to shift the burden to applicants to disclose the source of colloidal silica or silica in their inventive examples and to distinguish the prior art toner particles from the claimed toner particles.

11. The reference US 6,197,466 B1 (Fields'466), which is listed on the form PTO-1449 filed on Jan. 18, 2005, has an issue date that is prior to the filing date of the instant application. Accordingly, Fields'466 also qualifies as prior under 35 U.S.C. 102(a).

12. Claims 4, 17, 30, and 35 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 6,197,466 B1 (Fields'466), as evidenced by the ACS File registry number 60806-47-5,

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applicants' admission at page 22, lines 1-15, and in Table 3, of the instant specification, and US 5,709,075 (Yoerger).

Claims 4, 17, 30, and 35 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fields'466, as evidenced by the ACS File registry number 60806-47-5, applicants' admission at page 22, lines 1-15, and in Table 3, of the instant specification, and US 5,709,075 (Yoerger).

Fields'466 exemplifies a developer comprising a particular magnetic hard ferrite carrier and toner particles. The toner particles comprise 92.2 wt% of a styrene-acrylic copolymer, identified by the CAS #60806-47-5, produced by Eastman Kodak, 6.4 wt% of carbon black, and 1.4 wt% of a single charge control agent, an organo iron complex charge control agent associated with the tradename T77. The toner particles are surface treated with 0.15 wt% of hydrophobic silica associated with the tradename HDK 1303, obtained from Wacker Chemie. See Fields'466, col. 3, lines 15-35; col. 7, line 64, to col. 8, line 31; Table 2 at col. 4; and Table 8 at col. 9, example 5, two steps. The amounts of 92.2 wt%, 6.4 wt%, and 1.4 wt% were determined from the information provide at col. 3, lines 15-35. The CAS, i.e., ACS, file registry no. 60806-47-5, identifies the styrene-acrylic copolymer in Fields'466 as a styrene-

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butylacrylate-divinylbenzene copolymer. Thus, the styrene-acrylic copolymer in Fields'466 is a crosslinked styrene-acrylate copolymer as recited in instant claim 30. The Fields'466 toner meets the compositional limitation recited in the instant claims.

Fields'466 does not report a 2 minute charge level for the toner particles as recited in the instant claims. After mixing the toner particles with the magnetic hard ferrite carrier for 2 minutes, the toner particles had a charge level of $-15.6 \mu\text{C/g}$. After mixing the toner particles with the magnetic hard ferrite carrier for 10 minutes, the toner particles had a charge level of $-17.6 \mu\text{C/g}$. The charge ratio at 2 minutes to the charge level at 10 minutes is 0.9, which is numerically within the range of about 0.9 to about 1.1 recited in instant claim 30. Fields'466, col. 7, line 64, to col. 8, line 31; and Table 8 at col. 9, example 5, two steps.

The instant specification shows that when the toner particles comprise surface treating silica particles, the toner particles exhibit a 2 minute charging level and 2'/10' MECCA charge ratio within the ranges recited in instant claim 30. When the toner particles do not comprise surface treating silica particles, the toner particles exhibit a 2 minute charging level outside the range recited in instant claim 30. See Table 3 in

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the instant specification, examples 1-4. Furthermore, the 2'/10' charge ratio and the 2 minute charge level determined by a MECCA device appear to be dependent on the type of carrier particle used. According to the instant specification, the 2 minute and 10 minute charge levels are determined by mixing the toner particles with carrier particles. Instant specification, page 22, lines 1-15. As shown in Table 3 of the instant specification, developers comprising the same toner particles but different carriers exhibit different 2 min MECCA charge levels and different 2'/10' MECCA charge ratios. Yoerger also shows that developers comprising the same toner particles but different carriers exhibit different 3 minute and 10 minute MECCA charge levels. Yoerger shows that the MECCA charge levels depend not only on the carrier coating, but also on the type of carrier magnetic core and on the age of the carrier. See Yoerger, Tables 1 and 2, for example, examples 1 and 7 and comparative examples 1 and 7. The instant claims do not limit the type of carrier particles

Accordingly, because the Fields'446 toner particles meet the compositional limitation recited in the instant claims and because the 2 minute and 10 minute charge levels determined by a MECCA device are dependent on the type of carrier used, it is reasonable to presume that the Fields'446 toner particles have a

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2 minute charge level and a 2'/10' MECCA charge ratio when measured with the appropriate carrier. The burden is on applicants to prove otherwise. Fitzgerald, supra.

Applicants' arguments filed on Jun. 27, 2005, have been fully considered but they are not persuasive.

Applicants' assert that the Fields' 446 toner particles do not exhibit a 2 minute charging level as recited in instant claim 30.

However, for the reasons discussed in the rejection above, it is reasonable to presume that the Fields' 446 toner particles exhibit a 2 minute charging level and a 2'/10' MECCA charging ratio as recited in instant claim 30. There is no evidence on the present record to show otherwise. Accordingly, the rejection stands.

13. Claims 25-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not exemplify a developer comprising toner particles as recited in instant claims 25-29 and a magnetic carrier as recited in instant claims 25-29.

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As discussed in paragraphs 8 and 9 above, Fields'880 exemplifies a developer comprising toner particles and a magnetic carrier. However, there is not enough information on the present record to reasonably determine that the magnetic carrier is a ferrite carrier as recited in instant claims 25-29.

Moreover, for the reasons discussed in the office action mailed on Feb. 23, 2005, paragraphs 12 and 13, it would have been obvious for a person having ordinary skill in the art to use a magnetic carrier as recited in instant claims 25-29 as the magnetic carrier in the developer disclosed by Fields'880. However, Fields'880 is not prior art under 35 U.S.C. 103(c) for the reasons discussed in paragraph 3 supra.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janis L. Dote whose telephone number is (571) 272-1382. The examiner can normally be reached Monday through Friday.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janis L. Dote whose telephone number is (571) 272-1382. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Mark Huff, can be reached on (571) 272-1385. The central fax phone number is (571) 273-8300.

Any inquiry regarding papers not received regarding this communication or earlier communications should be directed to Supervisory Application Examiner Ms. Claudia Sullivan, whose telephone number is (571) 272-1052.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLD

Aug. 15, 2005

Janis L. Dote
JANIS L. DOTE
PRIMARY EXAMINER
GROUP 1500
1700